IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2524 OF 2004

1. M/s. M. Dinshaw & Co. & Anr. .. Petitioners

Vs.

1. Inspectorate Dock Safety & Ors. .. Respondents

Mr. S.V. Marwadi i/by D. Dwiwedi for Petitioners.
Mr. D.N. Salvi for Respondent No.1.
Mr. S.S. Pednekar, APP for Respondent No.2-State.

CORAM: S.C. DHARMADHIKARI, J.

Date : December 07, 2005.

P.C.:

1. Rule. By consent rule is made returnable forthwith. Heard both sides.

2. The Writ Petition is filed to challenge an order issuing process upon a complaint bearing No.1903/S/2003 filed before the Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai. The offences alleged in the said complaint are under Section 14(2) of the Dock Workers (Safety, Health & Welfare) Act, 1996 read with Regulation 6 of Dock Workers (Safety, Health & Welfare) Regulations, 1990. First petitioner is Private Limited Company and second

petitioner is the Managing Director thereof. At the time when the first petitioner was carrying out unloading of general cargo from a ship which was docked at Indira Docks, an accident occurred. One dock worker Gariba sustained serious injury and thereafter succumbed to the same. An inquiry was carried out in the incident. Ultimately, since the worker was working for unloading of general cargo from the aforesaid ship at the instance of the present petitioners, they were charged with offences punishable under the aforesaid Act and the Scheme.

3. This petition was placed before this court on earlier occasions. Notice was directed to be issued to the concerned Chief Inspector of Dock, Safety & Director General who was added as respondent no.3. After notice was served, the petition appeared before this court and petitioners counsel suggested that they would pay compensation to the heirs and legal representatives of the deceased and the matter can be amicably resolved.

4. When this matter was placed before me on 28th November, 2005, after hearing Mr. Marwadi and Mr.

Salvi, I had recorded the statement of Mr. Marwadi that petitioners would show their bona fides and deposit a sum of Rs.1 lakh in this court by today. The amount of Rs.1 lakh has been deposited on 2nd December, 2005.

5. Mr. Marwadi submits that ultimately this is a matter where prosecution of the petitioners for offences allegedly committed under the above mentioned Act and Scheme would not result in any consolation for the bereaved family. Additionally, it is contended that the first petitioner is a Private Limited Company of which second petitioner is a Managing Director. The second petitioner is aged 80 years and suffering from various ailments. He has not been able to attend the court and stands permanently exempted from personal appearance. He is not able to walk and is advised bed rest. A Private Limited Company being prosecuted through the Managing Director who is ailing would entail his appearing in the court and answer the charge. On account of the fact that he is unable to attend the court and further having demonstrated his bona fides and deposited the amount, this is a fit case where this court can exercise its inherent powers

and quash the proceedings. Mr. Marwadi submits that in addition to the aforesaid amount, as pointed out in the application for discharge, a sum of Rs.1,66,290/- has been paid by the Bombay Stevedores' Association. The amount was deposited with the Registrar's office of Commissioner of Workman's compensation by cheque. He states that the additional amount of Rs.1 lakh be also be made over to the Registrar's office of Commissioner of Workman's compensation and, therefore, adequate monetary compensation is offered to the bereaved family.

6. Mr. Salvi, on the other hand, states that payment by itself would not absolve the petitioners from the offences alleged against them which is a criminal prosecution. The entire Act is a welfare measure and the scheme involved is to compensate the workman concerned for his permanent or partial disability as also in case of death the dependents. Such being the intent and purpose of the enactment, this court should not exercise its inherent powers.

7. In my view, Section 482 confers wide powers on this court, not only to prevent abuse of process of a

court but also to make such order as it deem fit to secure ends of justice. In the present case, considering the fact that the accident has taken place admittedly on 5th February 1998 and the complaint is filed on 22nd January 1999. The process has been issued thereafter. The present petition has been filed after an application for discharge made by the petitioners was rejected by the trial court. That order is passed on 18th October, 2004. Thus for a period of more than five years nothing has been done in the criminal proceeding. The fact that the accused no.2 is of advanced age and suffering from several ailments is not disputed. Additionally, monetary sum has been deposited. The same can be made over to the Registrar's office of Commissioner of Workman's compensation and thereafter forwarded to the heirs and legal representatives of the deceased. In the light of the aforesaid and in peculiar facts and circumstances of this case, if this court exercises its inherent powers it would subserve ends of justice. This order would not be treated as a precedent in such cases.

8. In these circumstances, rule is made absolute

in terms of prayer clause (a). The office is directed to transfer the amount deposited by the petitioners to the office of Registrar, Commissioner of Workman's compensation, Mumbai. The Registrar of Commissioner of Workman's compensation, upon receipt of this amount, shall issue notice to the heirs and legal representatives of the deceased workman and after verifying the particulars furnished by them, release the amount. The said exercise be complete within a period of three months from the date of receipt by him of this amount.

(S.C. Dharmadhikari,J)